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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,659	05/01/2006	Emmanouil Domazakis	506845.3	8474
27526 7590 09/15/2011 HUSCH BLACKWELL LLP 4801 Main Street Suite 1000 KANSAS CITY, MO 64112				
EXAMINER STULIL, VERA				
ART UNIT		PAPER NUMBER		
1781				
NOTIFICATION DATE		DELIVERY MODE		
09/15/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-kc@huschblackwell.com

Office Action Summary**Application No.**

10/577,659

Applicant(s)

DOMAZAKIS, EMMANOUIL

Examiner

VERA STULII

Art Unit

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 3-18 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 3-18 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 08/19/2011
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/19/2011 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3, 9 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 3 recites the negative limitation of "non-olive based brine", claims 9 and 15 recite the negative limitation of "the brine does not comprise olive oil". Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See *In re Johnson*, 558 F.2d 1008, 1019,

194 USPQ 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for exclusion. The original disclosure does not provide the basis in the original disclosure. The recited olive oil in brine was not positively recited as an alternative element in the specification. Nowhere in the specification is stated that olive oil is excluded from the brine composition.

Claim 3 has been amended to substitute the phrase "until the extraction of meat protein has been achieved" with the phrase "until the extraction of meat protein has been completed". New claims 4, 9 and 16 have been added and recite the phrase "the soluble meat proteins have been substantially extracted". New claim 7 has been added and recites the phrase "until the extraction of meat protein has been completed". New claim 13 has been added and recites the phrase "substantially completely extracting proteins from the entire muscular tissue". In regard to these amendments, it is noted that the term "completed" or the phrase "substantially completely extracting" suggest coming to an end, which also suggests that all of the proteins have been extracted, and thus the extraction of the protein has been completed. However, after careful consideration of the instant specification and original claims, the support for such phrasing has not been found. The specific degree or level of protein extraction was not described. The specification discloses the fact that the protein extraction has been achieved as a result of meat tumbling (page 7 bottom paragraph of the Specification). In regard to the term "completed", the instant specification only discloses "complete

incorporation of the olive oil" (page 7 bottom paragraph, page 8 top paragraph).

Therefore, these amendments raise the issue of new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 8, 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The transitional phrases "comprising", "consisting essentially of" and "consisting of" define the scope of a claim with respect to what unrecited additional components or steps, if any, are excluded from the scope of the claim. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. In contrast, the phrase "group consisting of" is a closed term, which is often used in claim drafting to signal a "Markush group" that is by its nature closed. The transitional phrase "consisting of" excludes any element, step, or ingredient not specified in the claim. A claim which depends from a claim which "consists of" the recited elements or steps cannot add an element or step. In this case claims 7 and 13 recite the phrase "group consisting of" (i.e. closed set of elements). However, claims 8 and 14 depend from claims 7 and 13 respectively, further recite additional elements as a part of the closed set. Correction or clarification is required. For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, "consisting essentially of" will be construed as equivalent to "comprising."

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 3-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (U.S. 2003/0049364) in view of Hendricks et al (US 5,053,237) hereinafter Hendricks and Brandt (Marinades 'Meat' Challenges).

Regarding claims 3, 7 and 13, Domazakis teaches a method of producing meat-based products, such as cooked pork meats, sausages, and salamis, with direct embodiment of olive oil, which includes the following stages:

- Contacting meat with an appropriate brine, comprising water, salt and seasonings at low temperature (0° C) during mixing in the mixing machine([0038], Claim 1);
- Continuing mixing in the mixing machine until the temperature reaches 2°C ([0038]);
- Insertion of olive oil ([0038]);
- Continuation of mixing with simultaneous application of vacuum "in order to avoid oxidation" the temperature reaches 2 ° C ([0038]);
- Encasing meat with simultaneous application of vacuum and pasteurization ([0038])

In regard to **claims 3, 7 and 13**, Domazakis is silent as to the "entire muscular tissue" meat pieces. Hendricks discloses production of tender, flavorful, and juicy meat cuts without significantly increasing saturated fat content by injecting unsaturated

vegetable fats such as olive oil (Abstract, page 5 line 58). Hendricks further discloses difficulties in production of a high quality meat fat and fattening of animals in order to produce higher meat quality (Col. 1 lines 37-1). Hendricks also discloses negative health effects associated with saturated fats consumption and positive health effects associated with unsaturated fats consumption (Col. 2 lines 58-68; Col. 3 lines 1-15). Hendricks discloses that these problems could be solved by injection of olive oil into low grades of beef in order to produce "tender, flavorful, and juicy" meat cuts "without significantly increasing saturated fat content" (Col. 2 lines 56-67). In regard to the "entire muscular tissue" meat pieces, Hendricks discloses rib eye, round and bottom round meat cuts (Col. 9 Table 1). Since both Domazakis and Hendricks disclose multiple nutritional benefits of olive oil and benefits of substitution of animal fat with olive oil ([0001]-[0012], [0015]), one of ordinary skill in the art would have been motivated to modify Domazakis and to employ the process of incorporation of olive oil in the "entire muscular tissue" meat pieces as disclosed by Hendricks for the benefits as disclosed by Domazakis and Hendricks. One of ordinary skill in the art would have been motivated to do so, in order to produce higher quality "tender, flavorful, and juicy" meat cuts without significantly increasing saturated fat. One of ordinary skill in the art would have been motivated to do so, in order to increase consumption of health-beneficial unsaturated fats.

In regard to **claims 3, 7 and 13**, Domazakis is silent as to the injecting or tumbling of meat. In case of the chopped meat, it is not necessary to employ injecting in order to contact meat with brine, the simple mixing is enough. Brandt discloses that the

contact of marinade with meat in order to impart flavor could be performed via injecting (page 4). Brandt discloses marinating/treatment of meat using injectors, tumblers, massagers (page 1). Brandt discloses that "[m]ixing, tumbling and massaging of meat at low temperatures facilitates tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils" (page 1). Therefore, Brandt discloses addition of various ingredients to the meat by either of mixing, injecting, tumbling or massaging. Hendricks also discloses injecting as a method of introduction of marinade in the whole muscle meat tissue (Abstract). One of ordinary skill in the art would have been motivated to employ alternative method of contacting marinade/brine with meat such as injecting in order to achieve desired level of contact of meat with marinade. One of ordinary skill in the art would have been motivated to do so, since injection of brines/marinades into "entire muscular tissue" meat cuts was a well established practice in the art. Since Brandt discloses that tumbling or injecting are alternative methods of addition of various ingredients to the meat, one of ordinary skill in the art would have been motivated to modify Domazakis in view Brandt and to employ tumbling or injecting instead of mixing as an alternative technique for addition of various components to the meat as disclosed by Brandt. Since Domazakis discloses addition of marinade and olive oil by mixing, Brandt discloses that mixing, tumbling or injecting as alternative methods of addition of various ingredients to the meat, one of ordinary skill in the art would have been motivated to inject marinade and then further add olive oil by tumbling of meat.

In regard to **claims 3, 7, 8, 9, 13, 14 and 15** reciting the composition of brine, Domazakis discloses water, salt and spices ([0038]).

Regarding the recitation of extraction of proteins in **claims 3, 4, 10 and 16**, forming the substance on the surface of the muscular tissue in **claims 4, 10 and 16**, "creation of an emulsion of the extracted meat proteins with olive oil" in **claims 5, 11 and 17**, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, such as extraction of proteins, forming the substance on the surface of the muscular tissue and "creation of an emulsion of the extracted meat proteins with olive oil", these characteristics would have been expected to be as claimed absent any clear and convincing evidence and/or arguments to the contrary. The combination of references disclose the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the extraction of proteins, forming the substance on the surface of the muscular tissue and "creation of an emulsion of the extracted meat proteins with olive oil", among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the references has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.

In regard to **claims 6, 12 and 18**, Domazakis discloses encasing meat with simultaneous application of vacuum and pasteurization ([0038]).

Response to Arguments

Applicant's arguments filed 08/19/2011 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention (page 7 paragraph 3, page 12 bottom paragraph, page 13 top paragraph of the Reply), it is noted that the features upon which applicant relies (i.e., "ready-to-eat meat products") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments against the references individually (pages 9-12 and 18-19 of the Reply), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Domazakis is not relied upon as a teaching of the "entire muscular tissue" meat pieces. Domazakis is not relied upon as a teaching of the injecting or tumbling of meat. Domazakis is relied upon as a teaching of:

- Contacting meat with an appropriate brine, comprising water, salt and seasonings at low temperature (0° C) during mixing in the mixing machine([0038], Claim 1);
- Continuing mixing in the mixing machine until the temperature reaches 2°C ([0038]);

- Insertion of olive oil ([0038]);
- Continuation of mixing with simultaneous application of vacuum "in order to avoid oxidation" the temperature reaches 2 ° C ([0038]);
- Encasing meat with simultaneous application of vacuum and pasteurization ([0038])

Hendricks is relied upon as a teaching of the "entire muscular tissue" meat pieces. Hendricks discloses production of tender, flavorful, and juicy meat cuts without significantly increasing saturated fat content by injecting unsaturated vegetable fats such as olive oil (Abstract, page 5 line 58). Hendricks further discloses difficulties in production of a high quality meat fat and fattening of animals in order to produce higher meat quality (Col. 1 lines 37-1). Hendricks also discloses negative health effects associated with saturated fats consumption and positive health effects associated with unsaturated fats consumption (Col. 2 lines 58-68; Col. 3 lines 1-15). Hendricks discloses that these problems could be solved by injection of olive oil into low grades of beef in order to produce "tender, flavorful, and juicy" meat cuts "without significantly increasing saturated fat content" (Col. 2 lines 56-67). In regard to the "entire muscular tissue" meat pieces, Hendricks discloses rib eye, round and bottom round meat cuts (Col. 9 Table 1). Since both Domazakis and Hendricks disclose multiple nutritional benefits of olive oil and benefits of substitution of animal fat with olive oil ([0001]-[0012], [0015]), one of ordinary skill in the art would have been motivated to modify Domazakis and to employ the process of incorporation of olive oil in the "entire muscular tissue" meat pieces as disclosed by Hendricks for the benefits as disclosed by Domazakis and

Hendricks. One of ordinary skill in the art would have been motivated to do so, in order to produce higher quality "tender, flavorful, and juicy" meat cuts without significantly increasing saturated fat. One of ordinary skill in the art would have been motivated to do so, in order to increase consumption of health-beneficial unsaturated fats.

Brandt is relied upon as a teaching of the injecting or tumbling of meat. In case of the chopped meat, it is not necessary to employ injecting in order to contact meat with brine, the simple mixing is enough. Brandt discloses that the contact of marinade with meat in order to impart flavor could be performed via injecting (page 4). Brandt discloses marinating/treatment of meat using injectors, tumblers, massagers (page 1). Brandt discloses that "[m]ixing, tumbling and massaging of meat at low temperatures facilitates tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils" (page 1). Therefore, Brandt discloses addition of various ingredients to the meat by either of mixing, injecting, tumbling or massaging. Hendricks also discloses injecting as a method of introduction of marinade in the whole muscle meat tissue (Abstract). One of ordinary skill in the art would have been motivated to employ alternative method of contacting marinade/brine with meat such as injecting in order to achieve desired level of contact of meat with marinade. One of ordinary skill in the art would have been motivated to do so, since injection of brines/marinades into "entire muscular tissue" meat cuts was a well established practice in the art. Since Brandt discloses that tumbling or injecting are alternative methods of addition of various ingredients to the meat, one of ordinary skill in the art would have been motivated to modify Domazakis in view Brandt and to employ tumbling or injecting instead of mixing

as an alternative technique for addition of various components to the meat as disclosed by Brandt. Since Domazakis discloses addition of marinade and olive oil by mixing, Brandt discloses that mixing, tumbling or injecting as alternative methods of addition of various ingredients to the meat, one of ordinary skill in the art would have been motivated to inject marinade and then further add olive oil by tumbling of meat.

In response to Applicants' arguments regarding the processing of meat that involves "cooking", it is noted that Hendricks discloses incorporation of oil into fresh meats, and therefore, it would have been obvious to further cook the fresh meat with incorporated olive oil for further consumption (page 13 top paragraph, page 14 bottom paragraph of the Reply). Further in regard to the arguments directed to the "ready-to-cook" products vs. "ready-to-eat" product, it is noted that the claim is directed to the "meat-based product from entire muscular tissue", and there is nothing in the claim that further defines or suggests the state of meat (cooked, cured, fresh, etc.).

In response to Applicant's arguments on pages 14-15 of the Reply regarding Hendricks reference, it is noted that both Domazakis and Hendricks discloses incorporation of unsaturated fats into meat products in order to increase the quality of meats. Therefore, both references provide the same problem and solution, and therefore provide the common ground for combination. Further in this regard, as stated above, it is noted that Domazakis discloses incorporation of brine into meat product by mixing, insertion of olive oil and then further incorporation of olive oil into meat product by mixing. Brandt discloses addition of various ingredients to the meat by either of mixing, injecting, tumbling or massaging. Therefore, Brandt discloses alternative

methods of incorporating of various ingredients into meat products. One of ordinary skill in the art would have been motivated to employ alternative methods of contacting marinade/brine/oil with meat for the reasons as stated immediately above.

In response to applicant's argument regarding the extraction of proteins (pages 15 and 20 of the Reply), the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The Declaration of George Stephanopoulos pursuant to 37 C.F.R. 1.132 has been considered, but was not sufficient to overcome the case of obviousness. Therefore, claims 3-18 are rejected for the reasons as stated above.

Further in regard to the Declaration of George Stephanopoulos pursuant to 37 C.F.R. 1.132:

--on page 4 of the Declaration, Declarant states that no evidence has been provided so far with regards to "ready-to eat meat". This argument is not persuasive for the reasons as stated above;

--in response to the "long felt need" argument, it is noted that both Domazakis and Hendricks discloses incorporation of unsaturated fats into meat products in order to increase the quality of meats;

--In response to Declarant's argument regarding the extraction of proteins (page 5 of the Declaration), the fact that applicant has recognized another advantage which

would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further in this regard it is noted that extraction of proteins is seen to have been an inherent result of tumbling.

--In response to Declarant's argument regarding the references individually (pages 5-6 of the Declaration), this arguments are not deemed persuasive for the reasons stated above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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/Vera Stulii/
Examiner, Art Unit 1781